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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER	
			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			01/10/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/522,620

Applicant(s)

TERADA, EIJI

Examiner

Gregory R. Del Cotto

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/5/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's arguments and amendments filed 9/28/07 have been entered.

Claims 1-20 are pending.

Newly submitted claim 20 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 20 is drawn to a method of washing hair which is materially different and patentably distinct from the invention of original claims 1-7 which are drawn to a hair detergent composition. Note that, since the case has been filed as a 371 application, PCT rules governing restrictions apply. The inventions listed as Group I (original claims 1-7) and Group II (claim 20) do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special features for the following reasons: Claim 1, at least, is anticipated by or obvious over at least WO 03/066007 or Maurer et al (US 5,855,625) in combination with Evans et al (US 6,171,515). Consequently, the special technical feature which links claims 1-20, a hair detergent composition, does not provide a contribution over the prior art, so unity invention is lacking.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 20 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**Objections/Rejections Withdrawn**

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The following objections/rejections as set forth in the Office action mailed 7/2/07 have been withdrawn:

None.

***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to instant claim 4, the specification, as originally filed, provides no basis for the word "based". Thus, this is deemed new matter.

With respect to instant claim 16, the specification, as originally filed, provides no basis for the broad category of "conditioning component". While the specification does

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provide basis for a conditioning component selected from cationic polymers, cationic surfactants, silicones other than component (c), and oils, the specification does not provide basis for the broad category of "conditioning component" which would encompass any types of conditioning components. Thus, this is deemed new matter. Note that, claims 17-19 have also been rejected due to their dependency on claim 16.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 4, it is vague and indefinite in that it is not clear what is meant by sulfate-, sulfonate-, carboxylate- "based" surfactants. The specification provides no definition or guidance as to what is meant by the word "based" and in the absence of such a definition or guidance, it would not be clear to one of ordinary skill in the art as to what compounds other than those specifically listed would fall within the scope of "based" as recited by instant claim 4. Thus, one of ordinary skill in the art would not be able to determine the metes and bounds of the claimed invention. Note that, even though the word "type" has been deleted from claim 4, the Examiner asserts that the word "based" is synonymous to the word "type" in the context of claim 4.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-14 and 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by WO03/066007.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

'007 teaches a hair care composition which comprises an amino, polyol functional siloxane material, wherein the amino, polyol functional siloxane material may be prepared by reacting certain amino functional siloxane with one or more monoepoxides. Preferred hair care compositions include a shampoo composition, a leave-on conditioner, a semi-permanent colorant or a permanent colorant composition. Hair care compositions according to the invention are found to provide such benefits as improved conditioning, improved feel of the hair, reduction in colour fading and improved wash resistance of colour, depending on the type of composition provided. See Abstract. The specific siloxanes impart more than usual benefits of conditioning and improved feel to the hair. See para. 19. Note that, the silicone derivatives taught by '007 are the same as recited by the instant claims. See para. 6.

The compositions further comprise at least one anionic detergent surfactant, with preferably also a foam boosting agent, a pH adjusting agent, a thickening agent, and water. The shampoo composition may be, for example, optically clear, opaque or pearlescent. See para. 20. Suitable anionic surfactants include alkali metal sulfates,

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ether sulfates, etc. See para. 21. A pH adjusting agent, preferably to adjust the pH within the range of 4 to 9, may also be used in the shampoo compositions. Suitable acidic pH adjusting agents include lactic acid, succinic acid, adipic acid, etc. See para. 25. Other optional components may be added to the compositions including polyols such as glycerine and propylene glycol, conditioning agents such as quaternary polymers or silicone materials, etc. See para. 28. The additional optional ingredients can be present up to 5 parts by weight per 100 parts by weight of optically clear shampoo composition, but preferably are present in an amount of from 0.1 to 1 part by weight per 100 parts by weight of the shampoo composition. '007 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '007 anticipate the material limitations of the instant claims.

Claims 1, 2, 4-10, 12-14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurer et al (US 5,855,625) in view of Evans et al (US 6,171,515).

Maurer et al teach a laundry detergent for washing fabrics composed of proteinogenic fibers which contains at least one surfactant and a proteolytically active amount of a protease having a keratinase, caseinase activity ratio of less than about 0.80. See Abstract. The surfactants can be nonionic or anionic surfactants. Suitable anionic surfactants include the alkyl and alkenyl sulfates, ether sulfates, etc.

Specifically, alkyl sulfates having from 8 to 22 carbon atoms are suitable as well as ethoxylated sulfates having from 2 to 30 moles of ethylene oxide. Soaps may also be used in amounts from 0.1 to 5% by weight and include coconut oil, palm kernel oil,



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tallow oil, etc. See column 4, line 15 to column 6, line 10. Note that, the Examiner asserts that the soaps as taught by Maurer et al are the same as the oils as recited by instant claim 17 and listed on page 15 of the instant specification. To adjust an optionally acidic or mildly alkaline pH value of, in particular, about 8 to 9.5, the detergents may contain inorganic and/or organic acids or acidic salts such as succinic acid, adipic acid, or glutaric acid. The acidic substances are used in amounts of not more than 5% by weight of the composition. See column 8, lines 25-40. Besides water, solvents which are used in particular in liquid detergents include ethanol, propanol, isopropanol, ethylene glycol, propylene glycol, etc. See column 8, lines 60-69. Preferably, liquid detergent compositions contain 5% to 35% by weight of water-soluble organic builders, up to 15% by weight of water-insoluble inorganic builders, 0.5% to 10% by weight of synthetic anionic surfactant, from 1% to 25% by weight of nonionic surfactant, up to 15% by weight soap, up to 30% by weight of water and/or organic solvent, etc. See column 11, lines 1-20.

Maurer et al do not teach the use of the specific silicone derivative or a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Evans et al teach a fiber treatment composition which contains siloxanes having amine- and polyol- functionalities. The composition provides good hand, resistance to yellowing, and hydrophilicity to the fibers. The composition is preferably formulated as an aqueous emulsion. See Abstract and column 3, lines 10-20. Note that, the siloxane

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as taught by Evans et al is the same as the silicone derivative as recited by the instant claims. See column 3, lines 20-69. The textile treatment composition can have any suitable form. For example, the composition can be applied to the textile neat.

However, the textile treatment composition can be a solution, dispersion, or emulsion.

See column 6, lines 35-45. The fiber treatment composition can be applied to the fibers during the making of the fibers or later, such as during laundering the fabric. The textiles that can be treated with the textile treatment composition include natural fibers such as cotton, silk, linen, and wool; regenerated fibers such as rayon and acetate, synthetic fibers such as polyesters, polyamides, polyacrylonitriles, polyethylenes, etc.

See column 7, lines 35-69.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a specific silicone derivative in the composition taught by Maurer et al, with a reasonable expectation of success, because Evans et al teach that the use of the specific silicone derivative in a similar composition used to launder or treat fabrics provides provides good hand, resistance to yellowing, and hydrophilicity to the textile fibers which would be desirable in the cleaning compositions taught by Maurer et al.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Maurer et al in combination

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with Evans et al suggests a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 1-9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Man (US 6,506,261) in view of Evans et al (US 6,171,515).

Man teaches cleaning compositions containing nonionic surfactants, silicone surfactants, anionic surfactants, hydrotropes, and other optional functional materials including sequestrants. Substrates such as laundry and heavily soiled hard surfaces containing a substantial proportion of organic/inorganic soils such as greases, oils, and other hard to remove soil materials are readily cleaned by the compositions. See Abstract. Suitable nonionic surfactant include ethoxylated silicone surfactants, etc. See column 8, lines 1-40. Note that, the Examiner asserts that these would fall under the broad category of "conditioning agent" and "silicones other than component (c)" as recited by instant claims 16 and 17, respectively. Note that, on page 14, lines 10-25 of the instant specification, it is stated that suitable silicone conditioning agents broadly include polyether-modified silicones and alkoxy-modified silicones which would encompass the ethoxylated silicones as taught by Man. Suitable anionic surfactants include sulfonate, sulfate, and phosphate materials. See column 11, lines 10-20. Hydrotropes or couplers may be used in the compositions and include ethanol, isopropanol, n-propanol, 1, 2-propanediol (propylene glycol) etc. See column 12, lines 40-60.

Acidulants or alkaline agents are used to maintain the appropriate pH for the cleaners of the invention. Suitable acidulants include lactic acid, adipic acid, succinic acid, maleic acid, etc. In general, the pH of the compositions can vary from a low of about 2 to a maximum of about 13.0. See column 13, lines 1-40.

Man does not teach the use of the specific silicone derivative or a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Evans et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a specific silicone derivative in the composition taught by Man, with a reasonable expectation of success, because Evans et al teach that the use of the specific silicone derivative in a similar composition used to launder or treat fabrics provides good hand, resistance to yellowing, and hydrophilicity to the textile fibers which would be desirable in the cleaning compositions taught by Man.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Man in combination with Evans et al suggests a composition containing an anionic surfactant, a carboxylic acid, a

specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshowski et al (US 5,137,715) in view of WO03/066007.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Hoshowski et al teach a hair shampoo-conditioner composition including an anionic cleansing surfactant such as an alkyl sulfate or an alkyl ether sulfate and a polymeric conditioning agent in a suitable carrier, and having a pH of from about 2.5 to less than 7, to cleanse the hair. See Abstract. An acid is used to neutralize the amido amine compound which makes up the polymeric conditioning agent and to adjust the final pH of the composition to within a range of 2.5 to 7. Suitable acids include citric acid, lactic acid, gluconic acid, etc. See column 13, lines 40-65. The carrier is predominantly water but may contain solvents such as glycerol, ethylene glycol, propylene glycol, etc. See column 16, lines 1-26. The compositions may also include a conditioning agent such as stearyl alcohol, etc., in amounts from 0% to about 3% by weight of the composition. See column 15, line 60 to column 7, line 10.

Hoshowski et al do not teach the use of the specific silicone derivative or a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

'007 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the specific silicone derivative in the composition taught by Hoshowski et al, with a reasonable expectation of success, because '007 that the specific silicone derivatives impart more than the usual benefits of conditioning and improved feel to the hair in a similar cleaning composition.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Hoshowski et al in combination with '007 suggests a composition containing an anionic surfactant, a carboxylic acid, a specific silicone derivative, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO03/066007.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

'607 is relied upon as set forth above. Note that, the Examiner asserts that one of ordinary skill in the art would have a reasonable expectation of success to formulate the composition of '007 at a pH of 3.9 from a teaching of a pH of 4 by '007 due to an

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expectation of similar properties at 3.9 and 4. Note that, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Man (US 6,506,261) in view of Evans et al (US 6,171,515) as applied to claims 1-9 and 11-19 above, and further in view of Maurer et al (US 5,855,625).

Man and Evans et al are relied upon as set forth above. However, neither reference teaches the specific anionic surfactant in addition to the other requisite components of the composition in the specific amounts as recited by the instant claims.

Maurer et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an anionic surfactant such as lauryl sulfate in the composition taught by Man, with a reasonable expectation of success, because Maurer et al teach the use of an anionic surfactant such as lauryl sulfate in a similar cleaning composition and further, Man teaches the use of anionic sulfate surfactants in general.

### ***Response to Arguments***

With respect to WO03/066007 (Marchioretto et al), Applicant states since '007 has a publication date of August 14, 2003 and the instant application has an effective filing date of August 8, 2003, '007 does not qualify as prior art. Further, Applicant states that the Examiner has used the date of entry of '007 into the national state as the filing

date which is clearly in error. In response, note that, an international application publication may have an international filing date which serves as a US filing date for prior art purposes under 35 USC 102(e) if the following conditions are met: 1) an international filing date on or after November 29, 2000; 2) designating the United States; and 3) published under PCT Article 21(2) in English. See MPEP 2136.03(II). With respect to '007, this publication has an international filing date of January 31, 2003 which is clearly after 11/29/2000, has designated the US, and has been published in English. Thus, the international filing date of January 31, 2003 serves as the 35 USC 102(e) prior art US filing date for '007, which is before the effective filing date of the instant application (8/8/2003), and '007 is applicable as prior art under 35 USC 102(e). Note that, while Applicant claims foreign priority to JP 2002-232733 filed 8/9/2002, Applicant has not "perfected" priority by filing a certified English language translation of the priority document showing support for the claimed invention as of the priority date, and thus, '007 has been applied as an intervening reference.

With respect to the rejection of the instant claims under 35 USC 103(a) using Maurer et al in combination with Evans or Man in combination with Evans, Applicant states that one of ordinary skill in the art would not have been motivated to combine the teachings of Maurer et al or Man with Evans et al. Specifically, Applicant states that while Evans et al discloses that their fiber treatment composition may be employed during laundry, this is not the same thing as combining the laundry detergent components and fiber treatment components in the same composition. Additionally, Applicant states that Evans et al teach against the presence of an anionic surfactant in



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combination with their silicone derivative and therefore, one of ordinary skill in the art would not combine the silicone derivative of Evans et al with a laundry detergent composition comprising an anionic surfactant.

In response, note that, the Examiner asserts that Evans et al is analogous prior art, relative to Maurer et al or Man, and that one of ordinary skill in the art clearly would look to the teachings of Evans et al to cure the deficiencies of Maurer et al or Man. Evans et al is a secondary reference relied upon for its teaching of the specific silicone containing polymer as recited by the instant claims. Evans et al does indeed teach that the treatment composition containing the specific silicone polymer may be used during laundering of textiles followed by drying the textiles (See column 7, lines 50-60 of Evans et al) and the Examiner asserts that this would suggest to one of ordinary skill in the art to use said treatment composition containing said silicone polymer in a cleaning composition for laundry. Furthermore, the Examiner asserts that the fact that Evans et al do not teach the use of anionic surfactants does not amount to a teaching away from combining the textile treatment composition or silicone polymers with laundry compositions containing anionic surfactants; clearly, Evans et al teach that the treatment composition containing the silicone polymer can be used during laundering wherein the composition will be in contact with conventional laundry detergents which generally contain anionic surfactants. Furthermore, the Examiner asserts that Evans et al silence regarding anionic surfactants does not amount to a teaching away from anionic surfactants; nowhere in Evans is there a statement addressing any incompatibility of the textile treatment composition and/or silicone polymers with anionic

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surfactants. The Examiner maintains that one of ordinary skill in the art clearly would have been motivated to use a specific silicone derivative in the composition taught by Man or Maurer et al, with a reasonable expectation of success, because Evans et al teach that the use of the specific silicone derivative in a similar composition used to launder or treat fabrics provides good hand, resistance to yellowing, and hydrophilicity to the textile fibers which would be desirable in the cleaning compositions taught by Man or Maurer et al.

With respect to the rejection of the instant claims under 35 USC 103(a) using Hoshowski et al in combination with '007, Applicant states that since '007 does not qualify as prior art, the rejection must be withdrawn. In response, note that, as stated above, the Examiner maintains that '007 does qualify as prior art under 35 USC 102(e) and thus, the rejection has been maintained.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gregory R. Del Cotto  
Primary Examiner  
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GRD

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